Supreme Court, U.S.
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No. 92-1998

In The

Supreme Court of the United States

October Term, 1992

THOMAS AND ELIZABETH WEBB BEYER,

Petitioners,

vs.

ROBERT A. CANNON, M.D., et al.,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court grant review of an unpublished, California Court of Appeal decision, which merely holds that the operative complaint failed to contain facts to support the contention that plaintiffs were denied a timely hearing regarding their rights as parents to make medical decisions on behalf of their minor child?

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OPINIONS AND JUDGMENTS BELOW

Petitioners correctly state that the trial court's reason for sustaining the demurrer to the second amended complaint was based on statutory immunity. However, the Court of Appeal affirmed the trial court's action on an alternative ground raised in the demurrer: i.e., the failure of the complaint to state a cause of action for violation of petitioners' civil rights. The omission of this fact from petitioner's statement of "Opinions and Judgments Below" gives the false impression that the Court of Appeal affirmed on the immunity issue – which it did not.

JURISDICTION

Petitioners invoke the Court's jurisdiction under Supreme Court Rules, Rule 10.1(b) and (c). However, as explained in greater detail below, the Court of Appeal's opinion in this case does not conflict with any federal cases, nor does it raise a federal question, let alone an important one. For these reasons, certiorari should be denied.

STATUTORY AND CONSTITUTIONAL PROVISIONS

The only statutes which are arguably pertinent to the issue raised in this Court are the following:

California Code of Civil Procedure section 430.10, subdivision (e): "The party against whom a complaint or cross-complaint has been filed may object, by demurrer

or answer . . . on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action."

California Code of Civil Procedure section 472a, subdivision (c): "When a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. . . . "

California Code of Civil Procedure section 581, subdivision (f)(2): "The court may dismiss the complaint as to that defendant when: . . . (2) . . . after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal."

STATEMENT OF THE CASE[1]

Petitioners ElizaBeth Webb Beyer and Thomas Beyer filed the instant lawsuit against respondents the Regents

[1] The Petition for Writ of Certiorari ("Petition") suffers many flaws, not the least of which is the recitation of facts outside the record and outside the allegations of the operative complaint – (see Petition at 4, fn. 1, and at 5, fn. 3) – a problem which has plagued petitioners at every stage of this litigation. (See Petition at D-2 [by the Court of Appeal: in their appellate brief, petitioners "indiscriminately mingle allegations pleaded in their second amended complaint with others which were not so pleaded"].) Such extraneous facts – coupled with petitioners' discussion of issues which are simply not relevant to the Court of Appeal's resolution of this case – should not divert this Court's attention from the real issue, as set forth herein. Toward the goal of clarifying this case, we include this statement of the case which restricts itself to relevant facts only.

of the University of California, Robert A. Cannon, M.D., William J. Wenner, M.D., and Frank J. Loge, for injuries arising out of the provision of medical treatment to petitioners' minor son, Seth Beyer ("Seth") without petitioners' consent. With respect to petitioners, the complaint purported to allege causes of action under state law for negligent infliction of emotional distress and intentional infliction of emotional distress, and under federal law for violation of civil rights under 42 U.S.C. § 1983. (Petition at Appendix A.) The instant petition involves the cause of action for violation of civil rights only.[2]

Insofar as the civil rights claim is concerned, the second amended complaint alleged, essentially, as follows: In June 1990, petitioners brought seven-month-old Seth to respondents' hospital for treatment of a rare and serious metabolic disorder. When petitioners refused recommended treatment, respondents filed a mandatory report of suspected child abuse pursuant to California Welfare and Institutions Code section 300(b), and obtained an order temporarily transferring custody of Seth to the state for the purpose of administering the recommended medical treatment. While undergoing such treatment, Seth suffered adverse effects. Petitioners eventually obtained a court order transferring Seth to another treatment facility, and custody of Seth was then restored

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[2] The complaint also alleged a cause of action on behalf of Seth Beyer; that action was not dismissed and proceeded to trial after the appeal on behalf of petitioners was resolved against them. Seth's claim is not involved in this petition.

to petitioners. The complaint further alleged that petitioners were deprived of their rights, as concerned parents, to make medical decisions on behalf of their minor child. (Petition at A-9.)

Respondents demurred to the second amended complaint, asserting, in relevant part, that the complaint failed to state a cause of action for violation of petitioners' civil rights, and that, in any event, defendants were immune from liability under state law. The trial court sustained the demurrer with leave to amend the complaint. (Petition at D-1.) Instead of amending, petitioners filed a motion for reconsideration. The court denied the motion, and again gave petitioners 10 days to amend the complaint. But petitioners refused to amend, asserting their intention to stand on the complaint as it was, and asked the court to dismiss the complaint. The court complied. (Petition at D-2.)

On December 21, 1992, the California Court of Appeal for the Third District affirmed the trial court's order sustaining respondents' demurrer to the second amended complaint. In the first part of its decision, the court found the trial court had erred in concluding that respondents were immune from liability. (Petition at D-9 to D-11.) In the second part of its decision, however, the court held that, notwithstanding this error, the demurrer was properly sustained on another ground raised by the demurrer: i.e., the failure of the complaint to state a cause of action for violation of civil rights. The court further held that, because petitioners declined to amend the complaint when given the opportunity in the trial court, the action was properly dismissed. (Petition at D-17 to D-19.)

Petitioners subsequently petitioned the Court of Appeal for rehearing, asking for leave to amend their complaint to allege facts to support their claim for violation of civil rights. The Court of Appeal denied their petition. Petitioners' subsequent petition for review in the California Supreme Court on the same ground was also denied.

SUMMARY OF ARGUMENT

The instant action was dismissed because petitioners' complaint failed to allege facts to support their claim that they were deprived of their parental rights under the Fourteenth Amendment without due process of law. The Court of Appeal concluded – consistent with federal courts which have addressed this issue – that a plaintiff has no *substantive* due process claim for violation of parental rights under the Fourteenth Amendment. The court further held that the complaint failed to allege that petitioners were denied *procedural* due process, in that the complaint failed to contain any statement that a timely hearing was not held, that petitioners were not notified of any such hearing, or that respondents – who were the treating physicians and hospital director – were in any way responsible for setting a hearing on the custody issue. Thus, the court concluded, the complaint failed to state a cause of action for violation of procedural due process *against these defendants*. The issue petitioners would have this Court consider – i.e., whether their parental rights are protected under the Fourteenth Amendment – was not ripe, and remains unripe, for review by

any court in this case, since petitioners never got past the pleading stage.

The Court of Appeal's decision is not inconsistent with any holding by this Court or any federal circuit court. The decision does not address a federal question, or a question of any importance to anyone except the parties to this action. Moreover, because the opinion is unpublished, it could have no effect on any future cases. For these reasons, there is nothing for this Court to review, and the petition for writ of certiorari should be denied.

REASONS WHY CERTIORARI SHOULD BE DENIED

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THIS CASE PRESENTS NO FEDERAL QUESTION, OR OTHER IMPORTANT QUESTION, FOR THIS COURT TO REVIEW.

Petitioners contend jurisdiction of this Court is based on Rule 10.1(b) and (c) of the Supreme Court Rules. Those subdivisions provide for review by this Court in the following circumstances:

> "(b) When a state court of last resort has decided *a federal question* in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> "(c) When a state court or a United States court of appeals has decided an important *question of federal law* which has not been, but should

> be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." (Emphasis added.)

Petitioners contend the unpublished decision of the California Court of Appeal conflicts with decisions of this Court and of the Eleventh Circuit which hold that a parent's right to make decisions on behalf of their minor children is protected under the Due Process Clause of the federal constitution. (Petition at 7.)

The error in petitioners' argument lies in its misrepresentation of what happened in the California courts in this case. Petitioners ask this Court to determine whether parental rights to make medical decisions for their minor children may be usurped without due process – i.e., notice and an opportunity to be heard. They contend this Court and federal circuit courts have upheld such rights under the Fifth and Fourteenth Amendments to the United States Constitution. But, contrary to petitioners' contention, this issue was never decided – let alone decided against petitioners – by the California Court of Appeal in this case. Indeed, the issue was never properly before the California courts in this case. We explain.

Petitioners contend they were deprived of substantive and procedural due process when their minor child was taken into temporary custody by the State of California for purposes of administering medical treatment for a serious illness. Petitioners argue their right to choose the medical treatment for their child is protected under the Fourteenth Amendment.

The California Court of Appeal rejected petitioners' substantive due process claim on the ground that, although parental rights are protected under the Fourteenth Amendment, such rights are not absolute, but are subject to regulation by the state, as long as the procedures used comport with due process. This conclusion is entirely consistent with federal decisions. *See, e.g., Thomas v. Oklahoma*, 487 U.S. 815, 825, n. 23 (1988). Since there is no conflict on this issue, it is not properly a subject for review by this Court under Rule 10.1.

Petitioners also argue their procedural due process rights were violated, in that they were denied a timely hearing before being deprived of their right to choose medical treatment for their minor child. The Court of Appeal rejected this claim on the ground that it was based "entirely on factual allegations *which were not set forth in their complaint.*" (Petition at D-17, emphasis added.)[3] The court also held that, even if the facts upon which petitioners relied had been properly pleaded, such facts "would do nothing to state a cause of action for violation of due [sic] procedural due process *against these defendants.*" (Petition at D-18, emphasis in original.) The court explained:

> "The Beyers offer neither argument nor authority to explain how due process violations performed by the police or the juvenile court could be ascribed to either the treating physicians or the hospital director in this case. They fail to allege facts showing that these defendants had

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[3] This has been a consistent problem for petitioners. See footnote 1, above.

> any powers or duties under [the relevant statute], much less that these defendants breached any duty thereunder." (Petition at D-18.)

Although petitioners continue to assert that their complaint alleged "sufficient facts to show a violation of due process" (Petition at 9-10), they do so blindly, and continue to fail – as they did in the California courts – to demonstrate how this is so. A review of the complaint reveals allegations that defendants placed the minor in temporary custody of the state because an emergency existed under the relevant statutes. (Petition at A-6.) Petitioners contend no emergency existed (Petition at 5); but the second amended complaint fails to include any factual *allegations* to support petitioners' contention that the doctor believed no emergency existed. Instead, petitioners improperly rely on testimony at trial of their son's action *after* the dismissal of petitioners' action was affirmed by the California Court of Appeal, and review denied by the California Supreme Court. (Petition at 5.) Petitioners also contend the transfer in custody was illegally achieved (Petition at 10); but the complaint fails to state this. When given the opportunity to amend the complaint to include these facts, if they could, petitioners flatly refused to do so, seeking dismissal of the action instead. (Petition at D-2.) Under these circumstances, and under California law, the dismissal of petitioners' action is justified. *Vaughn v. Hugo Neu Proler Int'l*, 223 Cal.App.3d 1612, 1616 (1990).

Thus, contrary to petitioners' assertions, the California Court of Appeal's decision in this case does not conflict with any federal case upholding the protection of parental rights under the Fourteenth Amendment.

Indeed, the Court of Appeal acknowledged that parental autonomy is protected under the federal constitution, and determined only that the complaint failed to state a cause of action for violation of petitioners' due process rights.

Petitioners further contend that California case law generally conflicts with federal law by providing absolute immunity to child abuse reporters. (Petition at 13.) However, the Court of Appeal in this case refused to apply to this case the immunity to which petitioners refer. As noted above, the court expressly declined to affirm the judgment based on the immunity. (Petition at D-9 to D-10.) Thus, the issue of immunity is not ripe for decision by this Court in this case.

In sum, petitioners' action was not dismissed because California courts were confused about petitioners' rights; rather, the action was dismissed because petitioners failed to properly assert their rights. Since petitioners were, at all times, in control of the allegations of their complaint, and since they refused to amend the complaint, though given ample opportunity to do so, there is simply no question – let alone a federal question – for this Court to resolve.

CONCLUSION

For all the reasons given, the petition for writ of certiorari should be denied.

Dated: July 2, 1993

Respectfully submitted,

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